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No. 88-1374

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1988

JIMMY SWAGGART MINISTRIES,
Appellant,

vs.

BOARD OF EQUALIZATION
OF CALIFORNIA,
Appellee.

On Appeal from the California Court of Appeal, Fourth Appellate District

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BRIEF OF *AMICUS CURIAE* WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

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Interest of *Amicus Curiae*

Watchtower Bible and Tract Society of New York, Inc., (Watchtower) a not-for-profit religious corporation, is the parent organization of the more than 800,000 Jehovah's Witnesses in the forty-eight contiguous states, including over 132,000 Witnesses in California. Every one of Jehovah's Witnesses is an active door-to-door minister, preaching the good news of God's Kingdom to willing listeners and offer-

ing printed sermons in the form of religious tracts, pamphlets, magazines, books and Bibles for a suggested nominal contribution.

The court below and this Court in its recent decision in *Texas Monthly, Inc. v. Bullock*, 109 S. Ct. 890 (1989), have discussed this Court's prior decisions relating to the preaching activities of Jehovah's Witnesses. Watchtower, as the parent organization of Jehovah's Witnesses, is uniquely familiar with these activities. And although Watchtower supports neither party in this case, Watchtower believes this Court should be informed of the Witnesses' door-to-door preaching work and how a tax on either the distribution or receipt of a printed religious message would bear on this work. For these reasons, Watchtower has filed this brief *amicus curiae*.

Argument

Jehovah's Witnesses follow the example of Jesus Christ and his disciples in preaching the good news of God's Kingdom from city to city and house to house. Jesus "went journeying from city to city and from village to village, preaching and declaring the good news of the kingdom of God." Luke 8:1. His followers in the first century used the same method: "Every day in the temple and from house to house they continued without letup teaching and declaring the good news about the Christ, Jesus." Acts 5:42. *See also* Luke 10:1; Acts 20:20.

So too, Jehovah's Witnesses today present the good news of Jehovah's Kingdom under Jesus Christ from door to door. The only difference between Jesus

and his followers and Jehovah's Witnesses today is that, in addition to their spoken message, the Witnesses present printed material conveying the same Kingdom message. There is no commercial or profit motive behind the Witnesses' requests for nominal contributions for this literature. Persons who show interest but are unable to make a contribution may be given the printed material anyway because the purpose of the work is to preach the good news, not turn a profit. *See* Matthew 24:14; 28:19, 20.

Justice Murphy's description of the preaching activities of one of Jehovah's Witnesses and her minor niece over forty-five years ago accurately portrays the nature of this work and the motivation behind it then and now.

> The record makes clear the basic fact that [the niece] was engaged in a genuine religious, rather than commercial, activity. She was a member of Jehovah's Witnesses and had been taught the tenets of that sect by her [aunt]. Such tenets included the duty of publicly distributing religious tracts on the street and from door to door. Pursuant to this religious duty and in the company of [her aunt], [the niece] . . . was standing on a public street corner and offering to distribute Jehovah's Witness literature to passersby. There was no expectation of pecuniary profit to herself or to [her aunt]. It is undisputed, furthermore, that she did this of her own desire and with [her aunt's] consent. She testified that she was motivated by her love of the Lord and that He commanded her to distribute this literature; this was, she declared, her way of worshipping God. She was occupied, in other words, in "an age-old form of missionary evangelism" with a purpose "as evangelical as the revival meeting." Murdock v. Pennsylvania, 319 U.S. 105, 108, 109.

Prince v. Massachusetts, 321 U.S. 158, 171-72 (1944) (Murphy, J., dissenting).

The ongoing, house-to-house preaching activities of every one of Jehovah's Witnesses distinguish them from all other religious groups, including the Appellant. Indeed the activities of Appellant which have created its alleged tax liability are plainly different from the Witnesses' house-to-house preaching. Watchtower therefore takes no position and supports neither party on this appeal. However, since decisions of this Court from the 1940's considering the taxability of the Witnesses' methods of preaching and presenting religious literature from door to door appear to provide precedent that could influence or possibly even control the resolution of this appeal, Watchtower provides the following brief discussion of how a tax burden will affect the Witnesses' preaching work.

There can be no question that a tax imposed on either the presentation or receipt of a religious message is a burden on the act of either presenting or receiving that message. In the days of *Murdock v. Pennsylvania*[1] and *Follett v. Town of McCormick*,[2] Jehovah's Witnesses suggested a contribution of 5¢ per magazine and 25¢ per book from those interested in the message and willing to make a contribution. However, as stated above, magazines and books were often placed with interested persons who were unable to make a contribution. The same is true today. Jehovah's Witnesses suggest a contribution of 25¢ for

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[1] 319 U.S. 105 (1943).

[2] 321 U.S. 573 (1944).

the *Watchtower* or *Awake!* magazine, 30¢ for various pamphlets, and $1.00 to $3.00 for various books all on religious subjects. Again, literature is often given to interested persons who are unable to make a contribution.

The California tax at issue on this appeal, if construed to apply to ministers of Jehovah's Witnesses, would clearly impose a burden on their work. Assuming that each of the 132,000 door-to-door ministers of Jehovah's Witnesses in California is a "retailer" involved in the "business" of "sales" under the California tax code, each of them would be obligated to obtain a permit from the State of California for the privilege of "selling" tangible personal property "at retail" and would also be required to file quarterly tax returns on the contributions they receive for religious literature.[3] In addition, if the activities of Witness ministers are subject to taxation by the state, other taxing authorities (e.g., counties, municipalities) presumably could exact their taxes as well.

As might be expected, the occasional placement of magazines and pamphlets for contributions of 25¢ or 30¢, or of books for a dollar, does not generate much income, especially when one considers that each volunteer minister of Jehovah's Witnesses expends his own resources as far as time, gasoline, auto insurance and so forth when engaged in the ministry. Watchtower represents to this Court that the vast majority if not all of Jehovah's Witnesses

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[3] Cal. Rev. & Tax. Code §§ 6051, 6066, 6452 (West 1987).

operate at a loss if their activities are measured purely from a monetary standpoint. But this 'loss' is gladly and enthusiastically incurred because of the greater gain and satisfaction derived from being obedient to God's will and bringing a life-saving message to others.[4]

As has been stated many times, the only difference between a sermon presented in a religious tract or booklet and one delivered from a pulpit is the medium of presentation. Jehovah's Witnesses' use of religious literature in their preaching work is simply a method of reaching more persons with the Kingdom good news. A tract or booklet left with an interested person gives that person the opportunity to consult his own Bible and give more concentrated thought to the message.

The First Amendment assures freedom of speech, press and religious exercise. No one has yet proposed a tax (of whatever name or nature) on the traditional presentation or receipt of a religious ser-

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[4] Although the appellant in *Follett* "obtained his living from the money received; he had no other source of income," 321 U.S. at 574, Watchtower is unaware of any Witness minister who can do so today. The costs of distribution, including personal time and transportation, greatly exceed the small contributions received by the Witness minister. For example, the average Witness minister in California spends 9.9 hours a month in the ministry, leaving 6.1 magazines and 0.3 books with interested persons during the month. Even if one assumes that a contribution is received for each piece of literature placed, the average gross contribution from ministerial activities would be less than $1.85 per month for each Witness minister.

mon delivered orally from a pulpit even though those listening are encouraged to make a contribution in the collection plate. There is no principled distinction between a tax imposed on the deliverer or receiver of a printed sermon and a tax imposed on the deliverer or receiver of a spoken sermon. If the latter is abhorrent to First Amendment guarantees, on what principled basis can the former be countenanced?

Conclusion

Watchtower agrees with the court below —spreading the gospel "whether by 'age-old' methods or by new technologies, is protected by the Free Exercise Clause of the First Amendment." *Jimmy Swaggart Ministries v. Board of Equalization*, 204 Cal. App. 3d 1269, _____, 250 Cal. Rptr. 891, 897 (1988). However, Watchtower disagrees with the California court's abandonment of the following fundamental principle in *Murdock*:

> [T]he mere fact that the religious literature is "sold" by itinerant preachers rather than "donated" does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers and wholesalers of books. . . . [T]he problem of drawing the line between a purely commercial activity and a religious one will at times be difficult.

319 U.S. at 111.

Despite the occasional difficulties in distinguishing commercial from religious activities, the distinction exists and must be observed. Where the activity is religious, such as that of ministers of Jehovah's

Witnesses, the burdens imposed on retail merchants (to register, file quarterly returns, collect and pay license or sales or use or whatever taxes) should not encumber the right to freely deliver or receive a sermon, printed or otherwise.

Respectfully submitted,

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